

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

XYLIE ESHLEMAN,)	
)	
Plaintiff,)	
)	
VS.)	No. 15-1111-JDT-egb
)	
STATE OF TENNESSEE, ET AL.,)	
)	
Defendants.)	

ORDER ADOPTING REPORT AND RECOMMENDATION TO DISMISS,
CERTIFYING AN APPEAL WOULD NOT BE TAKEN IN GOOD FAITH
AND DENYING LEAVE TO APPEAL *IN FORMA PAUPERIS*

On May 8, 2015, the *pro se* Plaintiff, Xylie Eshleman, filed a document which the Clerk docketed as a complaint, accompanied by a motion to proceed *in forma pauperis*. (ECF Nos. 1 & 2.) After Plaintiff filed a proper *in forma pauperis* application (ECF No. 6), U.S. Magistrate Judge Edward G. Bryant granted leave to proceed *in forma pauperis* (ECF No. 7). On July 11, 2016, Magistrate Judge Bryant issued a Report and Recommendation (“R&R”) in which he recommended the Court dismiss the case *sua sponte* for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). (ECF No. 12.) Objections to the R&R were due within fourteen days, on or before July 28, 2016. *See* Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(d). The copy of the R&R mailed to Plaintiff was returned undeliverable on July 28, 2016 (ECF No. 13), and she has filed no objections.

The originating document filed by Plaintiff in this case is captioned “Court of Record, Notice of Void Judgment, Eshleman court at United States District Court for the Western District of

Tennessee” and titled “Void Judgment for Fraud, RE: Xylie Eshleman, Case #14-417 from circuit court Jackson Tennessee.” (ECF No.1 at 1.) She names the State of Tennessee and Tennessee Attorney General Herbert H. Slattery as Respondents. (*Id.*) In its entirety, the substance of the document states:

This is an Article III court of record correcting a fraudulent instrument that negatively affected me, a woman. Xylie Eshleman, a woman is hereby invoking this article III court of record.

The order from Circuit Court Jackson Tennessee case #14-417 named below is void for fraud:

1. Resisting arrest

Reasons for fraud (there are many more but this will suffice):

- A. The victim was originally City of Jackson but morphed to STATE OF TENNESSEE
- B. STATE OF TENNESSEE did not sign the complaint as the affiant with firsthand knowledge of facts
- C. There was no distinct and palpable injury
- D. Everything was baseless hearsay by impeachable hostile witnesses
- E. The elements of the offense were not listed in the charging instrument as Rule 3 requires
- F. Actual innocence

I affirm that I am a woman with firsthand knowledge of the truth of the statements made herein.

(*Id.*) Attached is a “Certificate for immediate execution of correction of void judgment Case #14-417 from court coram non judice Circuit Court, Jackson Tennessee.” (*Id.* at 3.)

It appears that Plaintiff may be attempting to challenge a criminal proceeding in the Madison County Circuit Court in which she was charged and possibly convicted of resisting arrest. In the

R&R, Magistrate Judge Bryant found that this document is frivolous. The Court also finds that the document fails to state any claim on which relief may be granted. Furthermore, to the extent Plaintiff may intend the document as a habeas petition, she has not alleged that she has exhausted her available state remedies.

The Court ADOPTS the R&R and DISMISSES this case pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(i)-(ii) as frivolous and for failure to state a claim on which relief may be granted.

Pursuant to 28 U.S.C. § 1915(a)(3) and Federal Rule of Appellate Procedure 24(a), the Court CERTIFIES that an appeal by Plaintiff would not be taken in good faith and DENIES leave to appeal *in forma pauperis*. Accordingly, if Plaintiff files a notice of appeal, she must also pay the entire \$505 appellate filing fee or file a motion to proceed *in forma pauperis* and supporting affidavit in the Sixth Circuit Court of Appeals.

The Clerk is directed to prepare a judgment.

IT IS SO ORDERED.

s/ **James D. Todd**
JAMES D. TODD
UNITED STATES DISTRICT JUDGE